APPELLANT PRO SE:

JAMES H. HIGGASON, JR.
Michigan City, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JAMES H. HIGGASON, JR.,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 46A04-0610-CV-582
	)	
INDIANA DEPARTMENT OF CORRECTION,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE LAPORTE SUPERIOR COURT
The Honorable Paul J. Baldoni, Judge
Cause No. 46D03-0608-SC-1024

August 7, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Appellant, and veteran pro se litigant, James Higgason, Jr., appeals the trial court's dismissal of his complaint pursuant to Indiana Code § 34-58-2-1. Higgason presents two issues for our review: (1) whether I.C. § 34-58-2-1 is unconstitutional, and (2) whether "[t]he Indiana General Assembly and the complete Indiana Judiciary are conspiring to suppress and/or quash all state prisoner litigation."

We affirm.

On August 3, 2006, Higgason, an inmate at the Westville Correctional Facility in Westville, Indiana, filed a Notice of Claim against the Indiana Department of Correction ("IDOC") on the small claims docket for LaPorte Superior Court No. 3. Higgason asserted therein that, as an indigent prisoner and pursuant to IDOC policy, he has a state-created entitlement to a sufficient quantity of free photocopies of his court pleadings in order to comply with the rules of court. Higgason specifically alleged that Stephen Huckins, a "paralegal/legal advisor" at the Westville Correctional Facility, refused to comply with his requests for photocopies of his court pleadings. Appellant's Br. p. 8. As a result, Higgason claimed that he incurred expenses to photocopy and mail his court pleadings. As damages, Higgason requested $1.00 per page for each photocopy of his court pleadings that he claimed the IDOC refused to provide him, reimbursement of the costs to him of copying the documents, and reimbursement of postal expenses. In total, Higgason requested damages in the amount of $2,109.11.

On August 18, 2006, the trial court dismissed Higgason's notice of claim pursuant to I.C. § 34-58-2-1, which provides:

> If an offender has filed at least three (3) civil actions in which a state court has dismissed the action or a claim under IC 34-58-1-2,[1] the offender may not file a new complaint or petition unless a court determines that the offender is in immediate danger of serious bodily injury (as defined in IC 35-41-1-25).[2]

In an apparent attempt to circumvent the limitation imposed by this statute, Higgason alleged in his complaint that IDOC employees were subjecting him to "an ongoing systematic campaign of harassment in retaliation for the prolific amount of litigation that he generates."[3] Appellant's App. p. 5a. Higgason related three incidents in which he alleged that he was the victim of physical force doled out at the hands of IDOC employees. The trial court reviewed Higgason's complaint and found that Higgason's allegations did not support his contention that he is in immediate danger of serious bodily injury.

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[1] Indiana Code § 34-58-1-2 provides, in pertinent part, as follows:

> (a) A court shall review a complaint or petition filed by an offender and shall determine if the claim may proceed. A claim may not proceed if the court determines that the claim:
>
> (1) is frivolous;
>
> (2) is not a claim upon which relief may be granted; or
>
> (3) seeks monetary relief from a defendant who is immune from liability for such relief.
>
> (b) A claim is frivolous under subsection (a)(1) if the claim:
>
> (1) is made primarily to harass a person; or
>
> (2) lacks an arguable basis either in:
>
> (A) law; or
>
> (B) fact.

[2] Indiana Code § 35-41-1-25 defines serious bodily injury as "bodily injury that creates a substantial risk of death or that causes: (1) serious permanent disfigurement; (2) unconsciousness; (3) extreme pain; (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or (5) loss of a fetus."

[3] This court has repeatedly recognized Higgason's fondness for inundating trial courts, this court, and even our Supreme Court with frivolous and meritless litigation. *See, e.g.*, *Higgason v. Ind. Dep't of Corr.*, 864 N.E.2d 1133, 1134 n.1 (Ind. Ct. App. 2007); *Higgason v. Lemmon*, 818 N.E.2d 500, 504-05 (Ind. Ct. App. 2004), *trans. denied*.

Before addressing the issue presented by Higgason, we note that the IDOC has not filed an appellee's brief.[4] In such instance, we do not undertake the burden of developing arguments for the appellee. *Conseco Fin. Servicing Corp. v. Kimberly Mobile Home Park*, 780 N.E.2d 852, 854 (Ind. Ct. App. 2002). Applying a less stringent standard of review, we may reverse the trial court when the appellant establishes prima facie error. *Id.* "Prima facie" is defined as "'at first sight, on first appearance, or on the face of it.'" *Id.* (quoting *Johnson County Rural Elec. Membership Corp. v. Burnell*, 484 N.E.2d 989, 991 (Ind. Ct. App. 1985)). Still, we are obligated to correctly apply the law to the facts in the record in order to determine whether reversal is appropriate. *Dominiack Mechanical, Inc. v. Dunbar*, 757 N.E.2d 186, 188 n.1 (Ind. Ct. App. 2001).

Upon appeal, Higgason challenges the constitutionality of I.C. § 34-58-2-1.[5] Specifically, Higgason asserts that I.C. § 34-58-2-1 is constitutionally unsound because it creates an insurmountable barrier for prisoners to assert claims for loss of personal property or for violations of their First, Fourteenth, and "most" Eighth Amendment claims because a prisoner would unlikely be able to show an immediate danger of serious bodily injury arising out of such claims. Higgason further asserts that I.C. § 34-58-2-1 violates Article 1, Section 12, the Open Courts Clause, of the Indiana Constitution.

First, with regard to his challenge under the Indiana Constitution, we note that another panel of this court, in *Smith v. Ind. Dep't of Corr.*, 853 N.E.2d 127, 133 (Ind. Ct.

[4] The Indiana Attorney General has filed a notice of non-involvement, which was accepted by this court.

[5] Higgason does not challenge the propriety of the trial court's determination that he has filed at least three civil actions in which a state court has dismissed the action under I.C. § 34-58-1-2 or that he failed to demonstrate an immediate danger of serious bodily injury.

App. 2006), *trans. pending*, painstakingly addressed this precise issue, concluding that I.C. § 34-58-2-1 is "facially constitutional under the Open Courts Clause" as it "does not unreasonably deny offenders the right of access to the courts." *Id.* at 135. *See also Higgason v. Ind. Dep't of Corr.*, 864 N.E.2d 1133 (Ind. Ct. App. 2007) (following *Smith*). We agree with the *Smith* court's analysis and therefore conclude that I.C. § 34-58-2-1 does not unreasonably deny offenders the right of access to the courts and is facially constitutional. Furthermore, given Higgason's complaint—which seeks reimbursement of the costs he incurred for copying and mailing pleadings he eventually filed in a court action — I.C. § 34-58-2-1 is not unconstitutional as applied to him.

With regard to Higgason's remaining constitutional challenges, we note that Higgason has wholly failed to include any legal analysis or cognizable reasoning to support such claims. Higgason simply provides excerpts from what he considers "relevant case law" to support his contention. Such excerpts are simply standards of review or broad, general statements applicable to a court's review of issues presenting constitutional challenges. We therefore conclude that Higgason has waived these issues for our review. *See* Ind. Appellate Rule 46(A)(8)(a).

We address one final argument presented by Higgason in his brief. Higgason briefly argues that the legislature did not intend for I.C. § 34-58-2-1 to apply to an offender's small claims complaint. Higgason asserts that it is extremely unlikely that a loss of personal property would be connected to a threat to his personal safety. Higgason's argument continues that because a small claims court does not have jurisdiction to grant injunctive relief, that is, the very relief necessary if alleging

immediate harm of serious bodily injury, that the legislature did not intend for I.C. § 34-58-2-1 to bar an offender's small claims complaint alleging a loss of personal property.

While presenting an interesting take on the applicability of I.C. § 34-58-2-1, we nevertheless disagree with Higgason's interpretation. Indiana Code § 34-58-2-1 was enacted by the legislature as part of a host of statutes enacted to screen and limit civil actions filed by offenders. These statutes—Indiana Code §§ 34-58-1-1 to -4 and I.C. § 34-58-2-1—were "in direct response to the prolific offender litigation that has been occurring in our state courts and were designed to balance an offender's right to file a civil action with the heavy burden that those suits have placed on our judicial system." *Smith*, 853 N.E.2d at 131.

First, we note that small claims actions are civil actions. In passing I.C. § 34-58-2-1, the legislature made clear that "[i]f an offender has filed at least three (3) *civil actions* in which a state court has dismissed the action or a claim under IC 34-58-1-2, the offender may not file a new complaint or petition unless a court determines that the offender is in immediate danger of serious bodily injury (as defined in IC 35-41-1-25)." I.C. § 34-58-2-1 (emphasis supplied). The legislature did not carve out an exception for the subset of civil actions brought as small claims actions. To adopt Higgason's interpretation of this statute would create an exception that would completely undermine the legislature's goal of curtailing frivolous and meritless claims that "consume valuable judicial, administrative, and law enforcement resources." *Smith*, 853 N.E.2d at 138.

Higgason acknowledges that he is one of those prolific pro se prison litigators who has inundated our judicial system with civil actions. Indeed, Higgason "takes pride in his

litigious pursuits." Appellant's Br. p. 27. In his brief, Higgason further acknowledges that he is subject to the limitation set forth in I.C. § 34-58-2-1. The instant case is simply another example of application of that statute to effectuate its purpose. Higgason's small claims action requesting reimbursement for photocopies and postage is not a claim that he is "in immediate danger of serious bodily injury." Indeed, we agree with Higgason that it is unlikely that claims for loss of personal property will ever give rise to a claim that an offender is in immediate danger of serious bodily injury. Nevertheless, Higgason has placed himself in a position where application of I.C. § 34-58-2-1 operates to bar any civil action he would bring, other than ones where Higgason can demonstrate that he is in immediate danger of serious bodily injury. The legislature's clear intent and purpose for enacting I.C. § 34-58-2-1, and other related statutes, is to prohibit civil actions by excessively litigious offenders, i.e. those who have had three civil complaints dismissed as frivolous, meritless, etc., except in those instances where the offender can demonstrate an immediate danger of serious bodily injury. Contrary to Higgason's claim, the limitation found in I.C. § 34-58-2-1 is applicable to small claims complaints.

In support of his claim that the legislature and judiciary of this State are conspiring to quash prisoner litigation, Higgason provides us with eighteen handwritten pages detailing his personal plight while incarcerated and making unsupported accusations, none of which support his contention that a conspiracy exists. Other than a rambling diatribe, Higgason has not presented us with a cognizable argument.

The judgment of the trial court is affirmed.

ROBB, J., concurs

SULLIVAN, Sr. J., concurs in part and dissents in part with separate opinion.

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SULLIVAN, Sr. Judge, concurring in part and dissenting in part

I dissent for the reason that I respectfully disagree with Smith v. Ind. Dep't of Corr., 853 N.E.2d 127 (Ind. Ct. App. 2006) insofar as it holds that the same considerations that apply to a determination that I.C. § 34-58-1-2 is constitutional also apply to a review of I.C. § 34-58-2-1.

Indiana Code §34-58-1-2 requires a determination by the trial court that the proposed civil complaint "(1) is frivolous; (2) is not a claim upon which relief may be granted; or (3) seeks monetary relief from a defendant who is immune from liability for such relief." Only after such a determination has been made may the proposed complaint be rejected.

With regard to I.C. § 34-58-2-1, however, an arbitrary establishment of three prior unsuccessful law suits dismissed under I.C. § 34-58-1-2 absolutely precludes the filing of a fourth lawsuit unless there is immediate danger of serious bodily injury. This is so no matter how meritorious the current proposed complaint is. For this reason, I find I.C. § 34-58-2-1 to be in serious constitutional question.

Be that as it may, Higgason has not demonstrated or asserted that his instant lawsuit has merit. Therefore, the trial court was within is prerogative to dismiss the complaint on that ground.